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IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

Report By Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Addendum

Mission to Kuwait

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Introduction

Purpose of the mission

1. The Special Rapporteur visited Kuwait from 17 to 27 November 1996 at the invitation of the Kuwaiti Government and pursuant to his mandate under Commission on Human Rights resolution 1996/21, endorsed by the Economic and Social Council in its decision 1996/259.

2. The mission was undertaken after an exchange of correspondence, and following consultations, between the Kuwaiti Government and the Special Rapporteur as a result of allegations which he had received concerning racial discrimination and xenophobia with regard to migrant workers, particularly housekeepers of Indian, Sri Lankan, Bangladeshi and Philippine origin. 1/ The observations of the Kuwaiti Government were published in report A/50/476 (paras. 14-15) and submitted to the General Assembly and the Commission for consideration. The Special Rapporteur's attention has also been drawn to the situation of the Bidun.

3. It then seemed useful for him to visit Kuwait in order to meet the country's political leaders, representatives of non-governmental organizations (NGOs) and the communities concerned. The Special Rapporteur also talked with officials of the embassies of Bangladesh, India, the Philippines and Sri Lanka who were responsible for labour-related matters. A detailed list of the individuals and bodies whom the Special Rapporteur met is provided in annex to this report.

General comments

4. It must first be emphasized that the mission was carried out in an atmosphere of complete frankness and was facilitated by the willingness of the Kuwaiti authorities to engage in dialogue. The psychological effects of the Gulf war were still evident during these discussions and considerably complicated the task of approaching and understanding the question of migrant workers and that of the Bidun, who were variously described as undocumented persons, stateless persons and illegal residents.

5. The Kuwaitis are very concerned by the situation of the POWs 2/ held in Iraq. This point was anxiously raised at every meeting. Some feared that the question of human rights was being raised as a diversion or with a view to "destabilizing Kuwait, which is the most democratic country in the region and the one which shows the greatest respect for human rights". They were assured that such was not the purpose of the Special Rapporteur's visit, which he had made at the Government's invitation as a result of the complaints of racial discrimination and xenophobia transmitted to him.

6. In order fully to understand the manifestations and incidents of racial discrimination and xenophobia in Kuwait, it is important to bear in mind the country's demographic, social and cultural situation.

7. Of an estimated total population of about 2 million, there are approximately 700,000 Kuwaitis and 1,300,000 foreigners. 3/ The Kuwaitis are a minority in their own country, for it is estimated that there are nearly twice as many foreigners as Kuwaitis, including some 120,000 Bidun.

8. Less than 20 per cent of the country's manpower is Kuwaiti, although 10,000 graduates are unemployed; some point to this as proof of Kuwait's openness and generosity towards foreigners. But is it not rather a question of national policy?

9. Is it fair to speak of racial discrimination or xenophobia in Kuwait? The answer must be qualified, since it is the social system which leads to the exploitation of unskilled and, in particular domestic workers, most of them women, and to the marginalization of the Bidun. However, xenophobic tendencies are beginning to appear and are strengthened by the attitudes of the rich towards the poor. Kuwait still needs foreign manpower, both skilled and unskilled, but the country feels crushed under the weight of foreigners. There is a segment of society which considers that the nation's cultural identity must be preserved and is pressuring the Government to provide it with a "separate and protected life". Since social services such as education and health are free, some Kuwaitis feel that the well-being of foreigners is being placed before their own. For example, Kuwaitis feel disadvantaged when they want to see a doctor and learn that all appointments have been taken by foreigners. For that reason, the general public is demanding separate hospitals and doctors whose only patients are Kuwaitis; some are calling for separate neighbourhoods.

10. The Government is resisting these xenophobic tendencies, which manifest themselves as fear and rejection of foreigners and a wish to live separately from them; it has refused to build hospitals for foreigners, separate from those for nationals, though there is housing for foreign workers. Thus far, no racist or xenophobic statements have been noted, but the issue of the Bidun remains unresolved.

11. The legislation on nationality is discriminatory in that it establishes a hierarchy of citizenship. Those who acquired Kuwaiti nationality by virtue of having settled in the country prior to 1920 are full citizens, while those who acquired nationality in other ways do not enjoy the full range of civil and political rights. Furthermore, the child of a Kuwaiti woman married to a Bidun or a foreigner is not Kuwaiti. Kuwaiti nationality is granted at the discretion of the Ministry of the Interior and, as such, does not benefit from any judicial guarantees. Generally speaking, Kuwaiti nationality is considered a privilege, not a right.

I. SITUATION OF MIGRANT WORKERS

12. The first part of this report will deal with migrant workers, their recruitment and working conditions and, in particular, their treatment, which gives rise to allegations of racial discrimination and xenophobia or of human rights violations in general.

13. There are serious problems with regard to the situation of foreign and, particularly, unskilled workers, including domestic workers of Asian origin, most of whom are women. Their status is not governed by any single body of legislation, and their fate is wholly in the hands of their employers and the administration; they enjoy no protection under the law. Many employers mistreat their servants, who often flee and take refuge in the embassies of

their countries. Others, rightly or wrongly accused of stealing from their employers, are captured while in flight and taken to the holding centre in Dasma, then expelled without any legal protection.

14. Living conditions in the Dasma holding centre and the Talha prison, where male and female workers involved in litigation with their employers are held while awaiting expulsion, are extremely poor. At the Dasma Centre, during the Special Rapporteur's visit, 125 men were held in one room and some 60 women in another. Hygiene leaves much to be desired, and there is considerable promiscuity. This situation constitutes a violation of the rights of foreign workers.

A. The exploitation of unskilled and domestic workers

15. As stated above, two thirds of the Kuwaiti population is of foreign origin and includes nationals of between 100 and 145 countries. A distinction must be made between (a) the public and private sectors, the second of which includes the petroleum, or economic, sector; (b) domestic workers; and (c) manpower (skilled and unskilled).

1. Social and professional categories

16. According to specialists in Kuwaiti labour law, there are four social and professional categories: (a) the government sector (civil service), in which recruitment procedures and working conditions pose no problem (salaries of KD (Kuwaiti dinars) 450 or 650 per month and housing provided by the Government); (b) the public sector, which includes corporations, companies and State cooperatives and is covered by Labour Act No. 38 of 1964; (c) the petroleum sector, which is covered by Kuwaiti labour law. Thus, according to the specialist in labour law at the Kuwait Faculty of Law, these sectors are governed by legislation which includes general provisions based on international conventions; however, some provisions should be amended to take account of international conventions to which Kuwait attaches great importance, particularly since the country's liberation from invasion; and (d) domestic workers, whose situation is covered by the Civil Code and general legislation.

2. Indispensable foreign workers

17. Kuwait is a small country whose prosperity attracts nationals of various countries, within and outside the region, which are experiencing economic problems. The oil boom and rapid development of the country have resulted in a demand for manpower. The need for skilled and unskilled labour is met largely by immigrants, most of whom are from Arab countries (Egyptians and Palestinians) 4/ and have Egyptian, Jordanian or Lebanese passports. Recently, skilled workers from India and Pakistan have been recruited. Most unskilled workers, who are employed primarily in homes (as maids, nannies, guards, houseboys, cooks, chauffeurs, etc.), by cleaning firms and in the petroleum industry, come from Bangladesh, India, the Philippines or Sri Lanka. The latter group, comprising 850,000 persons, experiences the greatest number of problems (ill-treatment, non-payment of wages or sexual abuse).

B. Absence of national legislation to protect domestic workers

1. Random recruitment methods

18. There is no legislation governing the recruitment of domestic workers. It is handled by Kuwaiti recruitment agencies, which maintain a list of such workers who live abroad and wish to come to Kuwait. It must be said that some Kuwaiti recruitment agencies simply traffic in workers in order to make money. Some, for example, undertake to recruit and place 1,000 domestic workers per year. Since supply exceeds demand, competition is keen and wages range from KD 20 to KD 45. There is even rivalry between the States which export manpower, which have no coherent, stringent policies; each defends its own interests as determined by its unemployment rate.

19. In principle, domestic workers are hired for a two-year period, though some receive five-year contracts. Since each employer or sponsor has a right to two household workers, they make certain that an unsatisfactory one can be expelled and replaced by another. A servant who flees or is expelled must be replaced. For this reason, employers confiscate the travel documents of their employees (passports containing visas and other administrative papers) and hold on to them so that they can be turned over to the police if it is necessary to expel the employee. Most domestic workers have no contact with anyone outside, or even within, Kuwait. Since most of them do not know how to read, they do not know their employer's address. They leave their employer's home and take refuge in a safe house maintained by the embassy of their own country if they are mistreated, beaten, wounded or raped, are homesick and wish to leave before the end of their contract or are seeking a better-paid job.

2. The sponsor or Master

20. Anyone seeking to employ a domestic worker - every Kuwaiti has a legal right to employ two such workers (for example, a maid, chauffeur or cook) - turns to one of the many recruitment agencies. He makes his selection from a catalogue presented to him and pays KD 400; in a month or two, he accepts delivery of his "property" as "Cafil" or sponsor. Thereafter, the servant is his; some claim that there is a contract but, in reality, neither party has any rights or obligations with regard to the other. Domestic workers customarily receive about KD 35 per month, with progressive rises as and if the employer so chooses. The employer provides the employee with housing, food and clothing. In practice, there are no working hours; the servant works in the kitchen, does the dishes and laundry, acts as babysitter and, in short, functions as the maid of all work. Domestic workers have a right to one day off. Those authorized by their employers to leave the house gather in the central part of Kuwait City on Fridays, but others are kept at home by their employers for fear that they might run away or get pregnant.

21. Employer-employee relationships are complicated by the latter's problems in adapting to the Kuwaiti social and cultural environment. Generally speaking, domestic workers from the above-mentioned Asian countries do not speak Arabic and know nothing about Kuwaiti culture. Those from Bangladesh often have nothing in common with their employers except Islam. It is therefore difficult for such employees to adapt to the customs of the host

country. As communication is extremely difficult, employers sometimes use brutal methods, including beating, to make themselves understood and to explain what is expected of a maid. Furthermore, Kuwaiti women are increasingly aware of the social problem raised by entrusting their children to servants with a culture, and even a religion, different from their own and allowing them, in a sense, to bring up and exert a certain amount of influence over the children.

22. One of the consequences of the method of recruiting domestic servants, the living conditions imposed on them and the problem of adaptation to Kuwaiti society and to the families with which they live is that relations between employers and employees can easily become strained.

23. Many domestic workers are faced with a dilemma as a result of the ill-treatment they experience. Generally speaking, they have contracted debts in their own countries in order to pay visa and recruitment fees. They cannot go home unless they are in a position to pay those debts and to cover the cost of the return trip, for which the employer may refuse to pay. The employer may also seek reimbursement of the money he paid to the recruitment agency (KD 400). For that reason, in addition to confiscating their employees' documents, many employers withhold three or four months' salary.

24. A domestic worker who quits his job, may therefore be accused of having stolen his employer's property. An official search is begun; he is listed as "absconded" and his photograph is published in the newspaper with the words "Please contact ...". The employer owns the employee, who is his property and belongs to him. He can make the employee go back to work or leave him in prison, since he is now a Bidun, "an undocumented or illegal resident", and, as such, can be imprisoned at the Dasma Administrative Centre and later at the Talha prison. He will then be obliged to pay for his own ticket home unless his embassy or the Kuwaiti Government does so.

25. Some officials admit that domestic workers are subjected to ill treatment but, despite reports made by a free press which spares neither the National Assembly nor the Government they do not recognize the importance or the seriousness of the problem. They say that, although there have been some abuses it is important not to generalize and that beatings, wounding and rape are not as frequent as claimed. It is also said that modesty makes women hesitate to speak up unless a major scandal is involved. The most frequent complaints concern non-payment of domestic workers' wages (KD 25-35) over a period of several months.

26. A communication from the Kuwaiti Government dated 13 April 1995 states: "In the legal area, it may be noted that the Kuwaiti courts sentenced to penalties ranging from a few months in prison to 10 years' imprisonment a number of persons found guilty of sexual assault on housekeepers".

3. Situations mentioned by embassy representatives

27. The information on the situation of domestic workers gathered from institutions, journalists, NGOs, the University and surveys carried out at the Dasma Centre and the Talha prison has been corroborated by the Special Rapporteur's interviews with the officials of the embassies of Bangladesh,

India, the Philippines and Sri Lanka who are responsible for labour-related matters and regularly visit Dasma to see their compatriots who are imprisoned there.

28. The Special Rapporteur wishes to thank all those whom he met for their valuable assistance in providing him with information. What follows is a synthesis of that information which he hopes will make it possible to grasp the complexity of the situation of domestic workers in Kuwait.

29. There are 130,000 Bangladeshi workers in Kuwait, including 7,000-10,000 domestic workers who are "appreciated for their diffidence" and because, like the Kuwaitis, they are Muslims. A further 6,000 Bangladeshis were recruited by the Kuwaiti army after Bangladesh played an active role in the liberation of Kuwait. These soldiers are responsible for demining operations, surveillance of strategic points and military logistics. The problems encountered by Bangladeshi workers concern non-payment of wages, residence permits and visas. Lawsuits can take time, and the plaintiffs give up and thus lose their cases. Generally speaking, such cases involve unskilled workers in the cleaning sector (streets, schools and hospitals). There are 400 cleaning firms in Kuwait. Salaries range from KD 25 to KD 30 per month; workers are housed in barracks in the Hassabia and Abbasia neighbourhoods, crowded together and with bunk beds. Only two of these enterprises offer acceptable wages and housing, whereas several companies in the industrial sector make an effort to provide good housing and high wages and observe the provisions of Kuwaiti labour law. Their employees are provided with public transport but not food and, generally speaking, their living conditions are harsh and inhumane, leading one migrant worker to say "It's exploitation; the living conditions are unbearable, like in a prison. I have found no justice with my Muslim brothers". The Kuwaiti authorities lend an ear to complaints but try to avoid repatriating workers who have become illegal and endeavour to place them with another company, particularly if the previous employer has gone bankrupt. Setting aside the question of the poor living conditions at the Damas Centre, some consider that it functions as a little court where disputes are resolved by mutual consent.

30. Bangladesh had passed an act prohibiting Bangladeshis under the age of 25 from travelling abroad in order to take jobs as domestic workers; that act was repealed four months ago.

31. Several regrettable cases of the sexual abuse of domestic workers are before the courts, but proceedings are protracted. The information provided by the Ministry of Justice shows that, in fact, cases are carried over from year to year. Because of this slowness of the judicial machinery, those interviewed by the Special Rapporteur preferred the Dasma Centre, which, in their opinion, functions as a miniature court where disputes concerning matters such as back payment of wages or purchase of tickets home are resolved by mutual consent. An employee who quits his job or falls ill must request his official documents from his sponsor and the employee himself, or his embassy, often has to pay his ticket home. The fingerprints of persons who leave or are expelled are taken, and they are prohibited from returning for a period of two or five years, respectively. In order to avoid problems, Bangladesh has requested the recruitment agencies to form a national association and to designate a representative who would contact the countries

that supply manpower and domestic workers in order to establish a common policy. It has also been suggested that an act setting a minimum wage for employees of cleaning agencies, guards and domestic workers should be adopted; that the regulations governing residence permits (for workers, the work permit takes the place of a residence permit) should be changed; that the repatriation of those who wish to return home, or who are obliged to do so owing to illness or lack of a visa, should be facilitated; and that the situation of shepherds should be improved. The latter are the most neglected category of workers: they live in inhuman conditions, have no contact with the city, and are supplied with food by their employers only once every two weeks, even though the law explicitly prohibits the employment of shepherds unless their contract stipulates that they are to be provided with food - a requirement which employers blithely ignore. So-called seasonal fishermen also live in sub-standard conditions in makeshift huts near Doha.

32. The Philippines is a major exporter of manpower to Kuwait, where 55,000 Filipinos, including 28,000 domestic workers, of whom 15,000-20,000 are illegal, are employed. Domestic workers are recruited by illegal agencies in the Philippines; although the exploitation of workers has been prohibited by its Government since 1988, 25-30 persons without visas are recruited each month, for a fee, by private agencies. Philippine domestic workers are in the greatest demand because they are the most educated, and they command higher recruitment fees than nationals of other countries. Recruitment agencies charge KD 450-480 for Philippine housekeepers, whose monthly wages are KD 45-65; consequently, their employers are more demanding, a fact which leads to stress and violence and causes the workers to run away. Because domestic workers from the Philippines are more educated than others, they display more confidence and protest ill-treatment and abuse, a fact which irritates employers and leads to incidents, some of which are tragic and are exposed by the press. Domestic workers from other countries, owing to their level of education and to the language barrier, are less likely to complain.

33. The Philippine embassy maintains a shelter that houses about a hundred domestic workers in breach of an expulsion order issued at their employer's request after ill treatment, violence or rape or because they are pregnant or ill. Most of them are women; of the 102 cases mentioned during the Special Rapporteur's visit, only one involved a man. While it is estimated that 60-70 per cent of those who take refuge at the embassy do not tell the whole truth, there are photographs of domestic workers sporting black eyes. Some point out that it is comforting to realize that the Kuwaiti authorities are, at least, aware of such lapses and willingly cooperate with the embassy; an example of this cooperation is the recent opening of a Kuwaiti embassy in Manila.

34. There are 80,000 domestic workers and 20,000 skilled workers from Sri Lanka in Kuwait; the latter are protected by the country's labour legislation, but the former have serious problems. Employers often refuse to arrange for the issue of a residence permit, even after two or three years of service and, generally speaking, these workers, most of them women, cannot go home without that permit. They are sent to the Dasma Centre, where two or three months pass before their cases are dealt with.

35. Employers often refuse to pay for an employee's ticket home and many domestic workers have taken refuge at the embassy. Although non-payment of wages is frequent, it is difficult to prove; an employee may state that his wages have not been paid for 18 months but, without a pay slip, it is difficult to provide evidence that can be brought before a court. Nothing can be done if the employer denies everything.

36. The solution currently under consideration would entail keeping a record of wages or, with the consent of the Kuwaiti authorities, requiring part of an employee's wages to be deposited in a bank account. The Sri Lankan Government therefore proposes to include in labour contracts a provision stipulating that employers must pay 80 per cent of their employees' wages into a bank account in Sri Lanka. Visas issued to immigrants must be communicated to the Sri Lankan embassy in Kuwait so that the name and address of the sponsoring families of domestic workers can be recorded. In that regard, it has been suggested that it would be better for the employer to contact the embassy or the Dasma Centre to determine whether a missing domestic worker is there before applying to the police rather than following the reverse procedure, which is the current practice and results in an arrest.

37. It must be emphasized that Government employees, even foreign ones, are usually well treated and receive social benefits such as schooling, health care and housing free of charge. However, problems arise in large companies, whose workers are exploited. Of the 20,000 jobs in State cooperatives, 95 per cent are filled by foreigners and 5 per cent by Kuwaitis. There are agricultural, consumer (central markets, handicrafts and savings) and investment cooperatives. With few exceptions, wages are not paid and, except in the petroleum branch, the housing provided by companies in the economic sector is inadequate; workers responsible for the cleaning and upkeep of public buildings, squares and streets live in barracks in poor neighbourhoods, such as Hassaoui and Abbasia. They are housed six or seven to a room, hygiene is poor, and there is considerable promiscuity. They work two eight-hour shifts per day and are paid KD 30-35 per month. Before leaving their home countries, they are required to pay a security to the recruiting agency; Iranians, for example, pay KD 700-800 for a visa. They are promised high wages but, on their arrival in Kuwait, their contracts are rewritten. They are hired for two- to five-year periods and their families are left behind in their home countries. They are afraid to return home until they have repaid the money they borrowed to cover their recruitment expenses (visa and travel costs). It is a vicious circle: without a residence permit, an "undocumented" migrant worker has no legal right to remain in the country. He is arrested and taken to Dasma, then transferred to the Talha prison where, after being held for an indefinite period, he can be expelled or repatriated.

38. Problems also arise in connection with family situations (for example, marriage or family reunification). Marriages are registered at the embassies of those concerned; in the case of Sri Lankans, for example, the Government must give its authorization and determine that neither of the would-be spouses is registered as married in the home country. Family reunification rights vary according to the type of visa. Holders of No. 20 visas, in other words, domestic workers, may not be joined by their spouses; when two holders of this type of visa marry, they find it difficult to register and obtain residence permits for their children. The right to family reunification is contingent

upon a minimum salary of at least KD 650 for holders of No. 18 visas, who work in the private sector (for example, the clothing industry), and at least KD 450 for holders of No. 17 visas, who work for a ministry. Those who meet these criteria may apply directly to the immigration office and be joined by their spouses, but only as holders of No. 20 visas, in other words, as domestic workers, chauffeurs or skilled workers. Domestic workers are not entitled to family reunification.

4. Unemployment among Kuwaitis and promotion and protection of human rights by civil society

39. The following information has been corroborated by the Kuwaiti Human Rights Association, which emphasized to the Special Rapporteur that unemployment, and the influence of maids on the upbringing of children present Kuwait with social and economic difficulties. The public and private sectors compete for workers, and when the private sector finds that there are no Kuwaitis available to fill positions of responsibility, it recruits foreigners. It was repeatedly stressed that Kuwait recruits unskilled workers and trains them. Once trained by companies, some workers leave to seek better jobs in other countries.

40. Kuwaitis fear that the future may bring unemployment. It was pointed out that fundamentalists and other groups would like women to remain at home and be replaced by foreign manpower. According to the Kuwaiti Human Rights Association, Kuwait will have 3 million inhabitants - only a third of them Kuwaiti - in the year 2005. The Kuwaiti Graduates' Association has also expressed concern regarding the problem of unemployed Kuwaitis. According to the information it has provided to the Special Rapporteur, the country has 150,000 skilled workers, of whom 17 per cent are Kuwaiti and 83 per cent foreigners. Each year, 50,000 students graduate from the General Institute of Applied Studies and 20,000 from the University; there are also 10,000 unemployed with a general education, but the Government refuses to get rid of foreigners. The problem is allegedly that Kuwaitis are not finding the jobs they need. Since some Kuwaitis are not working in the areas for which they were trained, there are two types of unemployment: (a) "concealed unemployment", which results from the fact that the Government offers jobs because the Constitution requires it to find work for all Kuwaitis, but those taken on are not working in their own fields; (b) "manifest unemployment", where more than one person is hired to do the same job, resulting in high costs and inefficiency. Those interviewed by the Special Rapporteur made the following comments:

> "Kuwait cannot be said to be unfair to foreigners. They receive a good salary and training, and when they go home they have an advantage over others. Kuwait is training workers for other countries, and it is unfair to criticize it by exaggerating the slip-ups that occur in relations with migrant workers who, in any case, are better off in Kuwait than at home. ... Ill treatment here is a function of the needs of countries which have become exporters of manpower and of the competition between their representatives in Kuwait. ... We want to replace the foreigners with Kuwaitis because our own people are unemployed. Economists think it will be difficult to do this because a

distinction must be made between domestic work, which Kuwaitis refuse to do, and the skilled jobs which they hope to obtain but which require a long period of training."

41. Kuwaitis are aware of the problems posed by the Bidun and by the almost inescapable need for foreign workers, both skilled and unskilled. Most of those interviewed by the Special Rapporteur agree that "human rights, including those of prisoners since they are human beings, must be respected, all the more so when the people in question are domestic workers who live with the families for whom they work and when it is merely a matter of disputes between employer and employee". They value Kuwait's reputation as the most open, democratic and hospitable of countries. The Kuwaiti Human Rights Association, a branch of the Arab Organization for Human Rights, which has its headquarters in Cairo, has committed itself to the promotion of human rights. The Association has not yet been recognized by the Government, it says that NGOs have no official status in Kuwait. It cooperates with the National Assembly's Human Rights Committee and has placed before the National Assembly a bill which would grant it recognition as the National Human Rights Association. The bill has been considered but has not yet been passed.

42. There is also a progressive party, composed of the élite, writers and journalists, which monitors respect for human rights and, through publications and in the press, criticizes and castigates the Government and exposes ill treatment of foreign and, particularly, domestic workers. Courses on human rights are offered by the University, and many of the professors in the Faculty of Law are advisers to the Government and the National Assembly.

II. BIDUN, AN EVOLVING CONCEPT

43. The Special Rapporteur will attempt to clarify a problem which appears simple but has been complicated by Kuwait's political history and its conflicting and incoherent legislation. His explanation is based on interviews with various individuals, both official and non-official and, in particular, on his meetings with officials from the Ministries of the Interior and Social Affairs, the National Assembly's Human Rights Committee, the Chairman of the committee responsible for dealing with cases involving illegal residents, university professors and journalists. From those meetings, the following picture emerged.

A. A policy of national assimilation and integration

44. The peoples of Kuwait came from Arabia about 200 years ago; they include nomads, shepherds and pearl fishers. The discovery of oil in 1946 produced a flood of migrant workers and other persons from neighbouring countries. The Act governing nationality and the residence of foreigners was adopted in 1959. Under that Act, (a) anyone who settled in Kuwait prior to 1920 is considered a native-born Kuwaiti; (b) anyone who arrived after 1920 is considered a naturalized Kuwaiti; (c) pursuant to article 25 (d), nomads are exempt from the need for entry visas and residence permits and may come and go as they wish.

45. It was later decided that there was a lacuna in the Act, and article 25 (d) was deleted. As a result, some Bidun who had ceased to wander

and had settled in Kuwait found themselves undocumented and with no specific nationality. In addition to these historical Bidun, some foreigners entered Kuwait, and then hid or destroyed their papers in order to claim to be Kuwaiti and benefit from the country's prosperity and, in particular, its social benefits.

46. The question was, and remains, how to find an administrative solution to the problem of the Bidun. To that end, a distinction was made between two categories of persons: (a) those considered entitled to Kuwaiti nationality because one or more of their relatives are nationals of that country; (b) those who have not been proved to have any foreign nationality and who will be granted a residence permit once they are issued a passport from their own, or some other, country.

47. In 1960, 1970 and 1980, the Government placed all such individuals on an equal footing with Kuwaiti citizens. From an administrative point of view, a distinction was made between original Kuwaitis and Kuwaitis with "temporary passports", who were listed in censuses as "local residents". Original Kuwaitis and local residents enjoyed the same social, education and medical benefits free of charge and were permitted to join the army and the police.

B. Exclusion and marginalization

48. This situation continued until 1986, when the holders of temporary passports were pressured to prove their nationality. Consequently, the temporary passport was eliminated and local residents were no longer permitted to travel. In 1961, independence was proclaimed, putting an end to the British protectorate established in 1899. In 1963, a new Nationality Act was adopted, basing nationality on jus sanguinis but considering that only those whose names appeared in the 1965 census were Kuwaiti. Anyone who claimed to have been in Kuwait at that time was required to supply proof of the fact, so that some members of families were recognized as Kuwaiti while others were not.

49. The Act of 1959 has not been correctly applied. One committee accepts a person as Kuwaiti while another says that his brother is not Kuwaiti. Until 1985, they were all considered Kuwaiti. Before that date, a child born of a Kuwaiti mother and a Bidun was considered Kuwaiti. This provision has been repealed, and such children have become stateless. There are cases where, in a single family, children under the age of 18 become Kuwaiti while those over that age remain Bidun.

C. Nationalization and the search for foreign nationalities

50. The Bidun make up a third of the army, where they occupy important and sensitive positions. Most of them have been naturalized; after the liberation, some were transferred to less sensitive posts at the same pay. A naturalization policy was established for them, and their situation is better than that of civilian Bidun.

51. The 651 prisoners of war being held in Iraq include about 100 Bidun. Their families receive 70 per cent of their pay, and the remaining 30 per cent is held in escrow for them. They receive US$ 1,500 per month from the POW committee, which also guarantees them free social services.

52. The persons interviewed by the Special Rapporteur told him that, since the liberation, many Bidun had admitted their true nationality in order to obtain a residence permit, and that the Government encourages Bidun to register their nationality in order to formalize their situation; as a result, it is estimated that the number of Bidun has dropped from 250,000 to about 120,000. In cases where the Government does not grant them naturalization, it assists them in acquiring the nationality of some other country with which it conducts negotiations with a view to ensuring a continuing supply of the foreign manpower it needs.

53. In reply to the Special Rapporteur's question whether the Bidun were a homogeneous, indigenous group and/or made up of Arabs from the Gulf, he was told that while most of them were Arabs, some were Iranians, Iraqis or Asians. In any case, all those who were unable to produce documents proving that they had been in Kuwait before 1920 or included in the 1965 census are regarded as undocumented and are termed "illegal residents". Some of them, therefore, are stateless in their own country.

54. The allegation that the Bidun are confined to a particular region of the country, a "no man's land" between Kuwait and Iraq, was categorically denied. "If we didn't trust them, why would we place them in such a strategic area?" asked one of those interviewed by the Special Rapporteur, adding that there were no restrictions on the Bidun's movements; some of them, of course, lived in poor neighbourhoods, but "only for financial reasons". Others, on the contrary, were very rich and ran large businesses, using Kuwaitis as front men; those who were members of the army or public service employees were sometimes better paid than Kuwaitis. Some had requested naturalization, and their applications were under consideration.

55. Prior to the invasion, Bidun accounted for 80 per cent of the Kuwaiti army. In a speech before the National Assembly, the Second Deputy Prime Minister stated that many of them had allied themselves with the invader and, as a result, had fled to Iraq, the country from which most of them had come. Others had fought on the Kuwaiti side and therefore had the right to live in the country.

56. Some claim that the Bidun had been suspected of treason and therefore ousted from the army, had forfeited all their social rights, including the right to education and to free medical care, and were unable to find jobs.

D. Detention

57. During the Special Rapporteur's visit to the Talha prison, he met and spoke with Bidun who were being detained while awaiting a ruling on their possible expulsion. Other prisoners included "stateless" Bidun and "illegal" residents - foreigners who had entered the country clandestinely in search of work.

58. During this visit, the Special Rapporteur was informed that there were 581 detainees, 39 of whom had arrived that day. Some were accused of having committed crimes, of compromising State security or complicity with the enemy; others were asylum-seekers or were awaiting refoulement as a result of an administrative or judicial decision.

59. A nearby centre housed 177 women prisoners. Male prisoners are permitted to visit their wives and could receive family visits on Wednesdays and Sundays. The period of detention is abnormally long, varying from one week to six years, according to reports based on a survey of the prisoners. Reasons for their detention varied: one said he had "become undocumented" after living and working in Kuwait for 38 years; another, who claimed that his father and grandfather had been born in Kuwait, had been imprisoned for five years for having testified at the trial of his brother, a Kuwaiti accused of collaborating with the enemy; yet another was accused of illegal possession of weapons.

60. It seems that the question of the Bidun could have been settled in the period since independence. A series of commissions examined the problem in 1965, 1975, 1985 and 1991 but postponed solutions by adopting increasingly restrictive measures with regard to the granting of Kuwaiti nationality. Since the invasion of the country, the Government has become even more cautious in dealing with Bidun claims to Kuwaiti nationality.

61. It should be noted that, from 1986 until the Gulf War, Kuwait had no National Assembly. The new National Assembly which was constituted in 1992 and civil society (some of the progressive élite, writers, the press and pro-democracy movements) are pressuring the Government to resolve the problem of the Bidun, which has assumed international proportions owing to the activities of human rights organizations after the liberation as a result of the mobilization of the international community acting through the United Nations.

62. The committee at present responsible for dealing with cases of illegal residents was established in 1993. Its meetings are confidential and as yet no official information has been released. The Special Rapporteur gathered from his meeting with its Chairman that several recommendations for naturalization had been presented to the Government.

63. The authorities seem concerned by the question of the Bidun and have promised to find a definitive solution to the problem so that the term Bidun can be erased from Kuwait's social, economic and human rights vocabulary. Efforts are therefore being made and should be encouraged.

III. CONCLUSIONS AND RECOMMENDATIONS

64. The Kuwaiti Government has demonstrated its awareness of these human rights violations and manifestations of racial discrimination and xenophobia. It appears open to and mindful of the criticisms and recommendations made to it with a view to finding a definitive solution to the problem of the Bidun and to improving the legislation on migrant and, in particular, domestic workers.

65. Kuwait is the only country in the Gulf with an elected parliament. A parliamentary committee on human rights was established on 25 November 1992. Kuwait has the most advanced Constitution in the region and has ratified numerous human rights conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination.

66. Kuwait is committed to the advancement of women; for example, it is proud of having placed women in posts of responsibility: a Secretary of State for Higher Education, a University "director" and the Kuwaiti Ambassadress to South Africa. However, the Committee on Women and Development deplores the fact that only 6-8 per cent of decision-making posts are held by women, that, out of 4,000 government employees, there are only 200 women in administrative and managerial posts and that women have no political rights although, after a relentless struggle, this situation is being changed.

67. There are no signs of discrimination against foreigners in Kuwait, but rather an unacknowleged "national preference" on the part of a people that is a minority in its own country and sensitive to a foreign presence that massively outweighs its own in the field of employment. The legislative and social systems, conflicting and incoherent, result in the exploitation of workers, particularly unskilled and domestic workers. There are suggestions of non-violent xenophobia aimed at protecting Kuwaitis from foreigners. The prisoners at the Dasma Detention Centre and the Talha prison informed the Special Rapporteur that, in cases of conflict between a Kuwaiti employer and his employee or servant, the employee is imprisoned before any investigation is made and the Kuwaiti employer's statements are always accepted as fact. The administration has extremely broad powers, and there are no judicial guarantees to protect employees, undocumented persons and Bidun. The situation of foreigners and, in particular, that of unskilled and domestic workers, is a source of particular concern and is linked to the fact that there is no labour legislation guaranteeing the rights of all workers. Uniform, unambiguous legislation conforming to the international conventions ratified by Kuwait and guaranteed by an equitable system of justice, would make it possible to deal with the situation of foreigners on the Kuwaiti job market and thus ensure respect for human rights.

68. In the interests of Kuwait's reputation, the question of the Bidun, persons with no specific nationality or illegal residents, should be settled once and for all in an equitable and humane fashion.

69. The Special Rapporteur would like to reiterate the recommendations that he addressed to the Government at the end of his mission:

(a) That priority should be given to finding a definitive, humane and equitable solution to the problem of the Bidun, some of whom appear to be stateless in their own country, and to guarantee them access to social services;

(b) That legislation and a uniform labour code, in conformity with international conventions, should be adopted and its application enforced; to that end, that the Government should continue to cooperate with the International Labour Organization (ILO) in finalizing the bill prepared with ILO's technical assistance;

(c) That a national agency for the employment and recruitment of foreign skilled and unskilled labour and domestic workers should be created. A public agency of this nature would deal directly with the countries which export manpower and domestic workers, and replace the many private agencies at present active in this area;

(d) That Kuwait should cooperate with the countries which export domestic workers by offering instruction in conversational Arabic so as to facilitate social communication and avoid conflicts resulting from linguistic and cultural problems and incomprehension;

(e) That regulations and practical measures to ensure regular payment of wages should be adopted;

(f) That conditions for the detention and expulsion of persons whose presence is not authorized by law should be improved by providing them with legal protection and assistance;

(g) That cultural programmes on the countries that export manpower and domestic workers should be produced and broadcast on radio and television;

(h) That efforts to promote and strengthen democracy should be continued;

(i) That the United Nations human rights conventions and, in particular, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, should be ratified.

Notes

1/ See Middle East Watch/Women's Rights Project, "Punishing the Victim: Rape and mistreatment of Asian maids in Kuwait". (New York, August 1992.)

2/ Prisoners of War.

3/ Figures provided by the Civil Records Office.

4/ Prior to the invasion, there were about 400,000 Palestinians. Many of them collaborated with the Iraqi army during the invasion and subsequently left Kuwait. Only about 75,000 Palestinians remain.

Annex

PROGRAMME OF THE VISIT

Saturday 16 November 1996

Arrival in Kuwait City

Sunday 17 November 1996

Meeting with Mr. Adel Hussain Al-Jassam,
Diplomatic Attaché, Ministry of Foreign Affairs

Monday 18 November 1996

Meeting with H.E Ambassador Abdul Hamid Al-Awadhi,
Director of International Organizations Department, Ministry of Foreign Affairs

Meeting with Mr. Adalat Khan, Officer-in-charge of the UNDP Office
Ms. Nevine Guirgis, Deputy Representative
Ms. Hoda Yakoub

Tuesday 19 November 1996

Meeting with Colonel Mohammad J. Al-Fahad,
Director of International Organizations Liaison Office, Ministry of the Interior

Visit to Dasma Deportation Centre

Wednesday 20 November 1996

Considerations of cases submitted to the Special Rapporteur

Meeting with Mr. Abdul-Rhaman Y. Al-Mazroue,
Under Secretary, Ministry of Social Affairs and Labour and
Mr. Mohammed Ali Al-Kanderi, Assistant Under-Secretary for Cooperative Affairs

Thursday 21 November 1996

Meeting with Ms. Betty Lippold, Reporter, Arab Times

Friday 22 November 1996

Visit of migrant workers' residence areas

Observation of migrant workers' social life in the centre of Kuwait City

Saturday 23 November 1996

Meeting with Mr. Jamal Ahmed Al-Shehab, Assistant Under Secretary for Justice Palace Affairs and International Relations

Meeting with Ms. Ofelia M. Castro, Assistant Labour Attaché, Embassy of the Philippines

Meeting with Mr. W.P. Gunapala, First Secretary for Labour and Welfare, Embassy of Sri Lanka

Meeting with Mr. Reddy Y. Madineni, Attaché Labour Department, Embassy of India

Meeting with Mr. A.T.K.M. Ismail, First Secretary for Labour, Embassy of Bangladesh

Sunday 24 November 1996

Meeting with Mr. Mustapha Omar, Chief of Mission, UNHCR

Meeting with Mr. Ghanem Al-Goumhour, President
Mr. Hussein Al-Kallaf, Rapporteur
Dr. Fahd Al-Khanna, Mr. Samy Al-Minayes, Mr. Ahmed Al-Nassar and Mr. Farid Abdallah Al-Asfour, Members of the Committee on the Defense of Human Rights of the National Assembly

Meeting with Mr. Muzaffar Abdallah
Journalist, Al Talea

Meeting with Dr. Aboubakr Abdeen Badawi,
Country Representative and Regional Vocational Training Adviser,
International Labour Organization

Monday 25 November 1996

Meeting with Professor Shamlan Y. Al-Essa,
Department of Political Science, University of Kuwait

Meeting with Dr. Rashid Hamad Al-Anezi, Assistant Dean, University of Kuwait; Dr. Abdul Hady Abdul Aziz, Head, Department of International Law; Dr. Thama, Specialist in Labour Law

Meeting with Mr. Mubarak Al-Adwani, Manager, Public Relations and Information, and Mr. Zaid H. Al-Zaid, Officer, Kuwait Institute for Scientific Research

Meeting with Mr. Jassem A. Al-Qatami, Chairman and Mr. Abdel Ali Nasser, Vice-Chairman, Kuwait Society for Human Rights

Tuesday 26 November 1996

Meeting with Colonel Mohamed Ibrahim Al Siba'i,
Chairman Committee for the Affairs of Illegal Residents (Bidun)

Visit to Talha Prison

Wednesday 27 November 1996

Meeting with H.E Ambassador Khaled Al-Garallah, Under-Secretary of State, and H.E. Ambassador Abdul Hamid Al-Awadhi, Director of International Organizations Department, Ministry of Foreign Affairs

Meeting with Mr. Farouk Al-Nouri,
Director, Legal Department, Ministry of Foreign Affairs

Meeting with Ms. Kholoud Al-Feeli, Diplomatic Reporter,
Kuwait News Agency (KUNA)

Thursday 28 November 1996

Departure